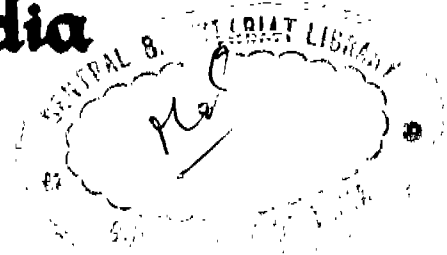




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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

THE JOINT COMMITTEE ON CENTRAL VIGILANCE COMMISSION BILL, 1999

COMPOSITION OF THE COMMITTEE

Shri Sharad Pawar — *Chairman*

MEMBERS

Lok Sabha

2. Shri Rashid Alvi
3. Shri Pawan Kumar Bansal
4. Shri Raghunandan Lal Bhatia
5. Shri Samar Chowdhury
6. Smt. Bhavnaben Chikhalia
7. Shri Priya Ranjan Dasmunsi
8. Shri Anant Mahadeoappa Gudhe
- *9. Maj. Gen. (Retd.) Bhuwan Chandra Khanduri
10. Shri C. Kuppusamy
11. Shri Bhartruhari Mahab
12. Shri M.V.V.S. Murthy
13. Shri P. H. Pandian

*Ceased to be member w.e.f. 7.11.2000 on being appointed as a Minister.

14. Shri Anadi Charan Sahu
15. Dr. Nitish Sengupta
16. Shri Maheshwar Singh
17. Shri Raghuvansh Prasad Singh
18. Shri Balaram Singh Yadav
19. Shri Devendra Prasad Yadav
20. Smt. Vasundhara Raje

Rajya Sabha

- **21. Shri M. Venkaiah Naidu
22. Shri Vedprakash P. Goyal
23. Shri Ranganath Misra
- @24. Shri Hansraj Bhardwaj
25. Shri V.P. Duraisamy
26. Shri C. Ramachandraiah
27. Shri Kuldip Nayyar
- #28. Shri Sanjay Nirupam
29. Shri S. Ramachandran Pillai
30. Shri Amar Singh

SECRETARIAT

- | | | |
|------------------------|---|------------------------|
| 1. Shri P.D.T. Achary | — | <i>Joint Secretary</i> |
| 2. Shri Ram Autar Ram | — | <i>Director</i> |
| 3. Shri P. D. Malvalia | — | <i>Under Secretary</i> |

I REPRESENTATIVES OF THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(DEPARTMENT OF PERSONNEL AND TRAINING)

- | | |
|-----------------------|----------------------|
| 1. Shri B. B. Tandon | Secretary |
| 2. Shri D. C. Gupta | Additional Secretary |
| 3. Shri R. K. Jain | Director (Vigilance) |
| 4. Shri Jugal Kishore | Under Secretary |

II REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(LEGISLATIVE DEPARTMENT)

- | | |
|-----------------------|---------------------------------------|
| 1. Smt. Sushma Jain | Joint Secretary & Legislative Counsel |
| 2. Shri S. R. Dhaleta | Deputy Legislative Counsel |

** Ceased to be member w.e.f. 25.10.2000 on being appointed as a Minister.

@ Retired on 2.4.2000 and reappointed w.e.f. 10.5.2000.

Retired on 2.4.2000 and reappointed w.e.f. 10.5.2000.

**REPORT OF THE JOINT COMMITTEE ON THE CENTRAL VIGILANCE
COMMISSION BILL, 1999**

I, the Chairman of the Joint Committee to which the Central Vigilance Commission Bill*, 1999 was referred, having been authorized to submit the Report on their behalf, present this Report.

2. The Bill was introduced in the Lok Sabha on 20 December, 1999. The motion for reference of the Bill to a Joint Committee of both Houses of Parliament was moved in Lok Sabha by Smt. Vasundhara Raje, Minister of State in the Ministry of Personnel, Public Grievances and Pensions on 21 December, 1999. (Appendix-I).

3. The Rajya Sabha concurred in the said motion on 23 December, 1999 (Appendix-II).

4. The message from Rajya Sabha was published in Lok Sabha Bulletin on 24 December, 1999.

The Chairman was appointed on the Committee on 28 December, 1999.

5. The Committee held twelve sittings in all.

6. At their first sitting held on 24 January, 2000, the Committee held a general discussion on various provisions of the Bill. The Committee had a briefing by the representatives of the Ministry of Personnel, Public Grievances and Pensions on various provisions of the Bill. The Committee decided to issue a Press communique inviting comments / suggestions on the Bill by 10 February, 2000, from the general public / organisations interested in the subject matter. It was decided that the contents of the Press communique be given wide publicity through Press, AIR and Doordarshan (Television). The Committee also decided to hear the views of some experts like Banking and Public Sector Undertaking Chiefs, Standing Committee on Public Enterprises, Secretaries of some selected Ministries and Director, Central Bureau of Investigation etc. as suggested by the Ministry of Personnel, Public Grievances and Pensions of the Government of India.

7. 42 Memoranda containing comments/suggestions on the provisions of the Bill were received by the Committee from various organisations/individuals etc. List is placed at Appendix III.

8. At their second sitting held on 15.2.2000, the Committee heard the views of the Chiefs of leading Nationalised Banks and Public Sector Undertakings on the subject matter. The Committee felt that it would not be possible for them to complete their work by the last day of the first week of the next Session (Budget Session of 2000) as they were still required to hear the views of the Secretaries of various Ministries/Departments of the Government of India and also the former Chief Vigilance Commissioners, Director of CBI and the general public who have requested to appear before the Joint Committee. The Committee further felt that they were still required to consider a large number of memoranda received from various Organisations/individuals and also to undertake and complete the various stages like (i) Notices of amendments likely to be recieved from Members of the Committee on the provisions of the Bill; (ii) Clause-by-Clause consideration of the Bill; (iii) Consideration and adoption of the draft Report; (iv) Appending of Minutes of Dissent, if any, to be given by the Members after adoption of the report. The Committee, therefore, decided to seek extension of time for presentation of the report upto the last day of the last week of the Budget Session of 2000, which was subsequently granted to them.

9. At their third sitting held on 16 March, 2000, the Committee heard the views of the former Central Vigilance Commissioner and the Director, Central Bureau of Investigation on various provisions of the Central Vigilance Commission Bill, 1999.

*Published in the Gazette of India, Extraordinary, Part-II, Section 2, dated 20.12.1999

10. At their fourth sitting held on 11 May, 2000, the Committee heard the views of the Secretaries of the Department of Chemicals and Petrochemicals, Department of Fertilizers and the Department of Mines. The Committee also decided to seek another extension of time for presentation of their Report upto the last week of the Monsoon Session, of 2000. It was granted to them by the Lok Sabha on 15.5.2000.

11. At their fifth sitting held on 16 May, 2000, the Committee heard the views of the Secretaries of Department of Family Welfare, Department of Public Enterprises; Department of Disinvestment; Department of Revenue; Department of Economic Affairs and Special Secretaries of Banking and Insurance Divisions of the Department of Economic Affairs and also the Director, of the Directorate of Enforcement.

12. At their sixth sitting held on 30 May, 2000, the Committee briefly deliberated upon this Bill in respect of various suggestions received from various individuals/organizations. The Committee also decided to hear the views of the then Central Vigilance Commissioner and the Vigilance Commissioner on various provisions of the Bill at their next sitting.

13. At their Seventh sitting held on 12 June, 2000, the Committee adjourned after making obituary reference on the sad demise of Shri Rajesh Pilot, a sitting Member of the Lok Sabha.

14. At their Eighth sitting held on 13 June, 2000, the Committee heard the views of Shri N. Vittal, Central Vigilance Commissioner and Shri V.S. Mathur, Vigilance Commissioner on various provisions of the Bill.

15. A list of persons who gave evidence before the Committee is at Appendix IV.

16. The Committee undertook clause-by-clause consideration on the provisions of the Bill on the basis of amendments suggested by the Members of the Committee at their Ninth and Tenth sittings held on 17 and 18 July, 2000.

17. At their Twelfth sitting held on 31 October, 2000, the Committee decided that (i) the evidence tendered before the Committee might be laid on the Table of both Houses of Parliament; (ii) two copies each of the Memoranda received by the Committee from various quarters might be placed in the Parliament Library after the report has been presented to Parliament, for reference by the Members of Parliament. The Committee also considered and adopted their Draft Report.

18. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

Clause 2 regarding definitions

19. The Committee recommend that the term 'Government Company' occurring in the Bill should be suitably defined so as to do away with any ambiguity in this regard.

Clause 3 regarding constitution of Central Vigilance Commission

20. Sub-clause 2 (b) of Clause 3:— The Committee accepted the suggestion made by the Central Vigilance Commissioner that like the Election Commission, the Central Vigilance Commission might also be made a three member body instead of five member body as proposed in the Bill. The Committee are of the view that 'three' is a reasonable composition and recommend that the word 'four' be substituted by 'two' in sub-clause 2(b) of Clause 3. As a consequence, in the first proviso to sub-clause 3, it may be prescribed that not more than 'two' persons shall belong to the category of persons referred to either in clause (a) or clause (b) of sub-clause 3 of this Bill. The Committee also recommend to delete second proviso to sub-clause (3) as it was no longer necessary in the light of the extant amendment.

21. The Committee note that as per the existing provisions of sub-clause 3 (3)(a) and 3(3)(b), the Central Vigilance Commissioner and Vigilance Commissioners are required to be appointed from amongst persons having qualifications prescribed in clause (a) and clause (b).

The Committee feel that the word 'and' occurring between these two sub-clauses gives an impression that such persons should have both the qualifications prescribed in sub-clause (a) and (b). The Committee, therefore, recommend that the word 'and' occurring between sub-clauses (a) and (b) of clause 3 should be substituted by the word "or".

Clause 5 regarding Terms and other conditions of service of Central Vigilance Commissioner and Vigilance Commissioners

22. The Committee feel that in order to have uniformity, the tenure of the Central Vigilance Commissioner and the Vigilance Commissioners should be the same. The Committee, therefore, recommend that like the tenure of the Central Vigilance Commissioner, the tenure of the Vigilance Commissioners should also be made 'four years' instead of existing 'three years' in sub-clause (2) of clause 5.

23. The Committee are of the view that after retirement or on ceasing to hold office, the Central Vigilance Commissioner and the Vigilance Commissioners should be made ineligible for taking any further employment under the Government of India or in the Government of any State or Union Territory. The Committee recall that such a provision existed in the Central Vigilance Commission Bill, which was introduced earlier in the Lok Sabha but subsequently lapsed. However, Vigilance Commissioners shall be eligible for being appointed as Central Vigilance Commissioner for the remaining period of their tenure. The Committee therefore, recommend that Clause 5 may accordingly, be amended.

Clause 6 regarding removal of Central Vigilance Commissioner and Vigilance Commissioners

24. The Committee feel that in addition to the existing provisions in the Bill for removal of Central Vigilance Commissioner and the Vigilance Commissioners, provision should also be made for their removal on the grounds of 'incapacity'. The Committee accordingly recommend amendment of clause 6 to the effect appropriately.

25. The Committee further feel that suitable amendment should also be made in clause 6 to provide that the Central Vigilance Commissioner and the Vigilance Commissioners shall, if deemed necessary, not to attend the office i.e., not to perform their official duties till the inquiry, if any, against them is over.

Clause 7 regarding power to make rules by the Central Government

26. The Committee note that in actual practice the rules regarding the number of members of the staff of the Commission and their conditions of service are framed by the Central Government in consultation with the Commission, and as such, it would be appropriate if the same is prescribed in this clause. The Committee, therefore, recommend that clause 7 may accordingly be amended.

Clause 8 regarding Functions and powers of the Central Vigilance Commission

27. The Committee observe that as per the provisions of clause 8(1)(a), the Central Vigilance Commission has been vested with the power of exercising superintendence over the functioning of the Delhi Special Police Establishment in respect of offences committed under the Prevention of corruption Act, 1988 or the Code of Criminal Procedure, 1973 with which a 'public servant' may be charged. In this regard, the Committee note that the term 'public servant' has not been confined only to the Civil Servants in accordance with the scope of this Bill. The Committee, therefore, recommend that the term 'public servant' appearing in clause 8(1)(a) may be spelt out to read as 'public servant' specified in sub-section (2). Similarly, the term 'public servant' appearing in Clause 8(1)(c) be clarified to read as 'public servant specified in sub-section (2)'.

28. The Committee further observe that clause 8(1)(a) has been incorporated on the recommendations of an independent Review Committee which recommended that in order to insulate the CBI from all pressures and from other considerations, the superintendence should vest with an independent agency like the Central Vigilance Commission. The

Committee, however, feel that the word 'superintendence' occurring in this clause should have a restricted meaning so that it may not amount to undue interference in the functioning of the CBI. The Committee, therefore, recommend that the existing proviso to clause 19 of the Bill may be made a part of sub-clause 8(1)(a) so as to provide that 'the Commission shall not exercise its powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner'. The Committee, as a consequence, also recommend that the existing clause 19 may be made a part of clause 8 where it may be incorporated as a new sub-clause and clause 19 may accordingly be deleted as an individual clause.

29. The Committee further observe that the wordings 'exercise superintendence over the vigilance administration' occurring in clause 8(1)(g) are likely to give unrestricted powers to the Central Vigilance Commission to interfere in the day to day administrative functioning of the Government bodies. In this regard, the Committee observe that the Central Vigilance Commission which is an advisory body has already issued a number of instructions to various Ministries/Departments/Organisations of the Central Government on several measures which appropriately fall within the executive authority of the Government and which have created difficulties in their implementations. According to the legal advice, the word 'superintendence' includes powers to give general policy directions. Moreover, it is the Central Government who is and will be accountable to the Parliament and the Central Vigilance Commission being a statutory body will not be accountable to the Parliament. It is therefore, considered appropriate that the powers to give general policy directions including on vigilance and disciplinary matters rests with Central Government. With a view to avoid unintended implications of the word 'superintendence' the Committee recommend that the existing sub-clause 8(1)(g) may be substituted with:—

- (g) Exercise superintendence over the vigilance administration of various Ministries of the Central Government or corporations established by or under any Central Act, Government Companies, Societies and local authorities owned or controlled by that Government :

"Provided that nothing contained in this clause shall be deemed to authorise the Commission to exercise superintendence over the Vigilance administration in a manner not consistent with the directions relating to vigilance matters issued by the Government and to confer power upon the Commission to issue directions relating to any policy matters."

30. The Committee, after hearing the views of various witnesses including representatives of Banks/Public Sector Undertakings and taking into consideration the increasingly competitive environment where risk taking forms part of normal commercial decision in various organisations, are of the view that the Central Government may notify following levels of officers under clause 8(2) (b) of the CVC Bill, 1999:

- (a) Officers upto one level below the Board level in the case of Corporations established by or under any Central Act, the Government Companies, societies and other local Authorities owned and controlled by the Central Government; and
- (b) Officers of Scale V and above in case of Public Sector Banks.

Clause 9 regarding Proceedings of the Commission

31. The Committee agree with the suggestion that all matters of policy and procedures should be decided with the majority concurrence of the Central Vigilance Commissioner and the Vigilance Commissioners as in the case of the Election Commission. The Committee recommend that suitable provision in this regard may be made in the Act.

Clause 14 regarding annual report

32. The Committee observe that in a large number of cases, the reports are not annually presented to the Parliament. The Committee, therefore, recommend that the Annual Report of

the Commission should be presented to the President every year within 6 months of the close of the year under Report.

Clause 17 regarding Report of any inquiry made on reference by Commission to be forwarded to that Commission

33. The Committee desire that the words 'it may' occurring in the proviso to sub-clause (3) of clause 17 be substituted with the words 'it shall' so as to make it mandatory for the Central Government to communicate the Commission the reasons for disagreeing with the advice of the Commission.

Clause 20 regarding consultation with Commission in certain matters

34. The Committee observe that the clause contains a typographical error and recommend that the words 'and Commission' may be substituted with the words 'the Commission' to do away with the error.

Clause 26 regarding appointment etc. of officers of Directorate of Enforcement

35. The Committee observe that the foreign Exchange Regulations Act, 1973 as referred to in clause 26, has since been replaced by the 'Foreign Exchange Management Act, 1999'. The Committee, therefore, recommend that the clause may be amended accordingly.

36. The Committee further recommend that under Clause 26(a), the Committee to recommend the names for the post of Director of Enforcement should also include Vigilance Commissioners as its Members.

37. The Committee further observe that as per the provisions of sub-clause (e) of clause 26, the Committee referred to in sub-clause (a) of clause 26 shall recommend officers for appointment to the posts above the level of Deputy Director of Enforcement and also recommend the extension or curtailment of tenure of such officers. The Committee desire that the provision should be suitably amended so as to provide that such recommendation be made in consultation with the Director of Enforcement.

38. The Committee further desire that like selection of Director, DSPE, the requirement of integrity and experience should also be prescribed for the selection of Director, Enforcement.

Clause 27 regarding Amendment of Delhi Special Police Establishment Act, 1946

39. The Committee observe that the sub-clause (a) contains the word 'Central Vigilance Commission Act, 1999'. In this regard, the Committee feel that as the Central Vigilance Commission Bill at the earliest could be passed only in the year 2000, the year '1999' mentioned therein, should be replaced by the year '2000'.

40. The Committee also recommend that under Clause 27(b), the Committee to recommend the name for the appointment of Director, DSPE should also include Vigilance Commissioners as its Members.

41. The Committee note that many witnesses who appeared before the Committee had expressed the need to protect the bonafide actions at the decision making level. At present there is no provision in the Bill for seeking prior approval of the Commission or the head of the Department etc. for registering a case against a person of the decision making level. As such, no protection is available to the persons at the decision making level. In this regard, the Committee note that earlier, the prior approval of the Government was required in the form of a 'Single Directive' which was set aside by the Supreme Court. The Committee feel that such a protection should be restored in the same format which was there earlier and desire that the power of giving prior approval for taking action against a senior officer of the decision making level should be vested with the Central Government by making appropriate provision in the Act. The Committee, therefore, recommend that Clause 27 of the Bill be accordingly amended so as to insert a new section 6A to the DSPE Act, 1946, to this effect.

42. The Committee further observe that while appointing the Director of DSPE, it has been prescribed that his appointment shall be made by a selection Committee which shall consider the views of the Director of DSPE. Since, it is obvious that such selection would be made only on retirement of the Director, DSPE, the Committee are, therefore, of the view that it would be more appropriate if the word "Director" is replaced by the word "outgoing Director" to remove any ambiguity in that regard. The Committee recommend amendment accordingly.

43. The Committee also makes the following *General Recommendations*:—

- (i) The Committee feel that for expeditious disposal of enquiries by the Central Vigilance Commission, some time-limit should be prescribed in the rules/regulations within which the inquiry must be completed and the decision taken.
- (ii) The Committee further feel that it should be prescribed by rules/regulations that action could be taken against a public servant if he fails to respond to the commission's show cause notice.
- (iii) The Committee are of the view that like customs and income-tax matters, provisions may also be made in the rules/regulations that the complainant who provides with material/information leading to detection of undisclosed wealth/assets of the public servants may be suitably rewarded.
- (iv) The Committee expresses its disapproval of Para 7 of the Statement of Objects and Reasons as it conveys an impression that Parliament is enacting this legislation under a direction from the judiciary. This statement ignores the basic constitutional scheme of separation of powers and functions of the State. The constitution of India vests the legislative power of the State in the legislatures and a legislation represents the will of the people expressed through their elected representatives. The source of a legislation therefore, can only be traced to the people and their social, political, economic and cultural needs.

The Committee then feel that Para 7 of the Statement of Objects and Reasons should therefore be deleted.

44. The Committee report back to the House the Bill 'as amended'.

NEW DELHI;
31 October, 2000

SHARAD PAWAR,
Chairman,
Joint Committee on Central
Vigilance Commission Bill, 1999.

MINUTES OF DISSENT

I

I have already expressed my reservation about the use of expression "superintendence" in Section 8(i) of the Draft Bill. Normally, I would have no objection to this word except for the interpretation given by the Attorney General which vests the authority exercising superintendence with powers far beyond what the dictionary meaning of the word "superintendence" would imply. I would like the expression "supervision" or "overseeing" in place of the expression "superintendence". It is admitted that following our discussion on the subject in the Committee, a provision has been introduced. Looking at the wide range of directions which have recently been issued to public sector undertakings fettering the exercise of their legitimate commercial functions, I am not sure if the interpretation given by the Attorney General with which I disagree, will not continue to create exaggerated notions about the CVC being a super police organization issuing such directions well outside the legitimate boundaries of vigilance administration and obstructing the normal functioning of government officials or public sector corporations. I would, therefore, once again urge that the expression "superintendence" be avoided and would suggest for consideration "supervision" or "overseeing".

Sd/-
(NITISH SENGUPTA)

II

I am submitting a dissenting note on the report of the Joint Committee on the Central Vigilance Commission (CVC) Bill on two counts. One is on the prior sanction by the Central Government before conducting an inquiry or investigation against employees of the level of Joint Secretary and above or against such officers as are appointed by the Central Government in corporations.

The other is on the entrustment of investigation and prosecution to the Delhi Special Police Establishment (CBI). Even the power of the superintendence by the CVC has been diluted.

Let me take the first. The clause 6A added to the Bill says: 'The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988, except with the previous approval of the Central Government where such allegation relates to:—

- (a) the employees of the Central Government of the level of Joint Secretary and above; and
- (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Government...

In its judgment on Dec. 18, 1997, delivered in the Jain Hawala Case (Vineet Narain and others vs. Union of India), the Supreme Court struck down what had come to be known as the Single Directive. It meant that the CBI could begin investigation or inquiry against high level bureaucrats without previous sanction from the head of the concerned department. This was a landmark judgment. The Supreme Court scotched the mischief or conspiracy to strangle investigations at the initial stage.

Our experience shows how the heads of departments have delayed permission for years. There has been no way to know why permission was granted in one case and rejected in another. The head of the concerned department has no guidelines from the government to follow. The entire process is *ad hoc*, capricious and whimsical. The Supreme Court rightly did away with the rule of jungle.

The Joint Committee in its wisdom has rejected the Supreme Court's decision and restored the *status quo ante*. The result is that the government will once again acquire powers to shield a delinquent officer, pliable and like-minded. Such public servants who carry out the errands of political masters will go scot-free because the permission for their prosecution will not be forthcoming.

Some sort of *quid pro qua* may come to be established. The officer concerned may be making money on one side but political bosses will keep their eyes shut because of the 'services' he renders to them. Corrupt officers will rule the roost due to their proximity to the seats of power. In due course, the general run of public servants may cease to be aware of what is right and may not have even desire to act according to what is right.

We have seen how the ethical considerations inherent in public behaviour became generally dim during the emergency (1975—77). Government servants became willing tools of tyranny. They followed the dictates of rulers and their extra-constitutional accomplices. The nation went through hell. The N.N. Vohra Committee has pointed out the existence of nexus between politicians, civil servants and criminals, a parallel mafia to the government. Corrupt deals, dishonest decision and wrong methods are the fall-out. By reversing to the old method of prior sanction, the Joint Committee has overlooked the problems, which the investigating machineries faced. The premium will be for dishonesty. It will be business as usual.

My other objection is to entrust investigation and prosecution to the same old machinery, which has been found wanting. The CBI has dismal track record. It has got politicised. It has been reduced to the status of a government department, which political bosses run in the way they like. The very exercise began because the Supreme Court found the CBI wanting in both the fields of investigation and prosecution. What is the purpose of going over the same exercise again ?

There are instances where directors of CBI were punished because they dare to pursue some VIPs. In one case, a CBI officer was instructed by one prime minister on the phone not to put questions to an accused. The officer was transferred. One CBI director got marching orders on the airport itself.

The observations of the Supreme Court are relevant:

...It took several years for the CBI to commence investigation and that too as a result of the monitoring by this Court. It is not as if the CBI, on conclusion of the investigation, formed the opinion that no case was made out for prosecution so that the earlier inaction may have been justified. The CBI did file numerous charge-sheets which indicated that in its view a *prima facie* case for prosecution had been made out. This alone is sufficient to indicate that the earlier inaction was unjustified. However, discharge of the accused on filing of the charge-sheet indicates, irrespective of the ultimate outcome of the matters pending in the higher courts, that the trial court at least was not satisfied that a *prima facie* case was made out by the investigation. These facts are sufficient to indicate that either the investigation or the prosecution or both were lacking. A similar result of discharge of the accused in such a large number of cases where charge-sheets had been filed by the CBI is not consistent with any other inference. The need for a strong and competent prosecution machinery and not merely a fair and competent investigation by CBI can hardly be overemphasised.'

It would have been far better if the CBI had been put under the CVC. It would function more independently. But the Joint Committee has rejected even the recommendation of an independent Review Committee that in order to insulate the CBI from all pressures and from other considerations the superintendence would vest with an independent agency like the CVC.

Instead, the Committee has said that 'the Commission shall not exercise its powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of a case only in a particular manner. The Committee is not even willing to strike, muchless to wound.

The CBI's 'interest' in the Jain Hawala Case is apparent from the remarks by the Special Judge, Shri V.B. Gupta, who threw out the prosecution. He said: 'I fail to understand what prevented the prosecution from conducting investigation under Section 13(1)(e) of the Act against the accused when the allegations made in the charge-sheet, *prima facie* show the commission of offence under this sub-section'. [S. 13(1)(e) deals with assets disproportionate to income].

There is no alternative to an independent agency. Personnel of CBI primarily belongs to IPS and other investigative services. Such personnel will be beholden to the political executive and higher echelons of bureaucracy. Unless an Independent Agency is established, the personnel will always think of their career prospects.

Like the Judiciary, the Comptroller and Auditor General of India and the Chief Election Commission, this agency must be completely autonomous and independent of the political executive and the bureaucracy. This independent autonomous agency should have a constitutional status in the long run but must be immediately given a statutory status. Such independent agency should be on par with the higher judiciary, the Chief Election Commission and the Comptroller and Auditor General of India and be headed by a person of the highest integrity and should have a protected tenure. Unless this is done, one cannot expect an agency to investigate effectively its own political and bureaucratic bosses.

The Independent Commission Against Corruption (ICAC), established by Hong Kong, is an autonomous agency with internal checks. It has proved to be successful. Set up in February 1974, the ICAC is independent of the Police and the rest of the Civil Service. It has three departments. The Operations Department which handles investigations and arrests, the Corruption Prevention Department which studies and recommends improvements in the department and the Community Relations Department which educates the public.

I have nothing against the Central Chief Commissioner being in government service. I am of the opinion that the vicissitudes which the American citizen faced and the manner in which the country met the challenge of official corruption is worth emulating.

President Nixon's attempt to break in at the Watergate Complex triggered an upheaval in American politics. Congress adopted the Ethics in Government Act of 1978. The long title of the Act is worth reproducing: "To establish certain Federal Agencies, effect certain

reorganisations of the Federal Government, to implement certain reforms in the operation of the Federal Government and to preserve and promote the integrity of public officials and institutions and for other purposes."

The statute provided for extensive financial disclosures and filings by legislative personnel by executive personnel, by judicial personnel. It also established an office of Government Ethics and provided for post-retirement conflict of interest provisions and provisions as to a Special Prosecutor, later amended and designated as Independent Counsel.

The judicial officers covered by the financial disclosure provisions included the Chief Justice of the United States Supreme Court and his Associate Justices and most of the Judges of various Federal Courts. Legislative personnel included members of the Senate and House of Representatives. Thus the highest in the land were subject to very detailed annual financial disclosures including their wealth, assets and gifts received. Such filings were also open to public inspection.

While talking about the CVC role, I want to bring to Parliament's notice what Lord Denning, an outstanding British Judge said :

"... I have no hesitation, however in holding that like every constable in the land, he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State. . . I hold it to be the duty of the Commission of Police, or it is of every Chief Constable, to enforce the law of the land. He must take steps so to post his men and crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are not to be prosecuted; and, if need be, bring the prosecution or see that it is brought, but in all these rulings, he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him he must or must not, that observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone..."

What has pained me most is the absence of any reference to politicians, including members of Parliament, in the report. At one time the Committee had decided to remind the government about the Lokpal Bill, which has been hanging fire for more than a decade. It was also agreed that the Committee would underline the importance of clean public life, to ensure the nation that politicians do not want to be treated as a class apart and they want the corrupt among them to be dealt with severely. For some reasons the Committee brought to a limp end a historic role it could have played to curb corruption.

Every politician in India pays lip-service to eradicating corruption. Every leader exhorts the citizen that he or she should carry out a campaign against corruption. By and large the politics of the country is so enmeshed in corruption that the citizen cannot expect any response from people in power, whether in Government or in Opposition.

I give below the letter I wrote to the Chairman of the Joint Committee after its first meeting :

"As a member of the Vigilance Commission Bill Committee, I feel that some step should be taken by the Committee itself to give a lead to the members of both Houses of Parliament. I suggest that the Committee members declare their assets and those of their spouses every year. I, for one, have been doing it since my nomination to the Rajya Sabha."

I believe the central point to development is the issue of governance and corruption. Bribery and corruption are not fringe issues. They have to be dealt with openly, decisively and courageously. Any compromise will only harm the nation.

With regards,

Yours sincerely,

Sd/-
(Kuldip Nayar)

**BILL AS REPORTED BY THE JOINT COMMITTEE
THE CENTRAL VIGILANCE COMMISSION BILL, 1999**

A

BILL

to provide for the constitution of a Central Vigilance Commission to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. This Act may be called the Central Vigilance Commission Act, 1999.

Short title.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "Central Vigilance Commissioner" means the Central Vigilance Commissioner appointed under sub-section (1) of section 4;

(b) "Commission" means the Central Vigilance Commission constituted under sub-section (1) of section 3;

25 of 1946.

(c) "Delhi Special Police Establishment" means the Delhi Special Police Establishment constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946;

2 of 1956.

(d) "Government Company" means a Government company within the meaning of the Companies Act, 1956;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "Vigilance Commissioner" means a Vigilance Commissioner appointed under sub-section (1) of section 4.

CHAPTER II

THE CENTRAL VIGILANCE COMMISSION

3. (1) There shall be constituted a body to be known as the Central Vigilance Commission to exercise the powers conferred upon, and to perform the functions assigned to it under this Act and the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Ordinance, 1999 which ceased to operate, and continued under the Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Resolution No. 371/20/99-AVD-III dated the 4th April, 1999 shall be deemed to be the Commission constituted under this Act.

Constitution of Central Vigilance Commission.

(2) The Commission shall consist of—

(a) a Central Vigilance Commissioner — Chairperson;

(b) not more than two Vigilance Commissioners — Members.

(3) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons—

- (a) who have been or are in an All-India Service or in any civil service of the Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration, or
- (b) who have held office or are holding office in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government and persons who have expertise and experience in finance including insurance and banking, law, vigilance and investigations:

Provided that, from amongst the Central Vigilance Commissioner and the Vigilance Commissioners, not more than two persons shall belong to the category of persons referred to either in clause (a) or clause (b).

* * * * *

(4) The Central Government shall appoint a Secretary to the Commission on such terms and conditions as it deems fit to exercise such powers and discharge such duties as the Commission may by regulations specify in this behalf.

(5) The Central Vigilance Commissioner, the other Vigilance Commissioners and the Secretary to the Commission appointed under the Central Vigilance Commission Ordinance, 1999 or the Resolution of the Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Resolution No. 371/20/99-AVD-III dated the 4th April, 1999 shall be deemed to have been appointed under this Act on the same terms and conditions including the term of office subject to which they were so appointed under the said Ordinance or the Resolution, as the case may be.

Ord. 4 of 1999

Explanation.—For the purposes of this sub-section, the expression "term of office" shall be construed as the term of office with effect from the date the Central Vigilance Commissioner or any Vigilance Commissioner has entered upon his office and continued as such under this Act.

(6) The headquarters of the Commission shall be at New Delhi.

Appointment
of Central
Vigilance
Commissioner
and Vigilance
Commissioners.

4. (1) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of—

- | | |
|---|----------------|
| (a) the Prime Minister | — Chairperson; |
| (b) the Minister of Home Affairs | — Member, |
| (c) the Leader of the Opposition in the House of the People | — Member. |

Explanation.—For the purposes of this sub-section, "the Leader of the Opposition in the House of the People" shall, when no such Leader has been so recognized, include the Leader of the single largest group in opposition of the Government in the House of the People.

(2) No appointment of a Central Vigilance Commissioner or a Vigilance Commissioner shall be invalid merely by reason of any vacancy in the Committee.

Terms and
other
conditions of
service of
Central
Vigilance
Commissioner.

5. (1) Subject to the provisions of sub-sections (3) and (4), the Central Vigilance Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier. Central Vigilance Commissioner, on ceasing to hold the office, shall be ineligible for reappointment in the Commission.

(2) Subject to the provisions of sub-sections (3) and (4), every Vigilance Commissioner shall hold office for a term of **four years** from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier.

Provided that every Vigilance Commissioner, on ceasing to hold the office, shall be eligible for appointment as Central Vigilance Commissioner in the manner specified in sub-section (1) of section 4:

Provided further that the term of Vigilance Commissioner, if appointed as Central Vigilance Commissioner, shall not be more than four years in aggregate as Vigilance Commissioner and Central Vigilance Commissioner.

(3) The Central Vigilance Commissioner or a Vigilance Commissioner shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in Schedule to this Act.

(4) The Central Vigilance Commissioner or a Vigilance Commissioner may, by writing under his hand addressed to the President, resign his office.

(5) The Central Vigilance Commissioner or a Vigilance Commissioner may be removed from his office in the manner provided in section 6.

(6) On ceasing to hold office, the Central Vigilance Commissioner and every other Vigilance Commissioner shall be ineligible for—

(a) * * * * *

(b) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal;

(c) further employment to any office of profit under the Government of India or the Government of a State.

(7) The salary and allowances payable to and the other conditions of service of—

(a) the Central Vigilance Commissioner shall be the same as those of the Chairman of the Union Public Service Commission;

(b) the Vigilance Commissioner shall be the same as those of a Member of the Union Public Service Commission:

Provided that if the Central Vigilance Commissioner or any Vigilance Commissioner is, at the time of his appointment, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Central Vigilance Commissioner or any Vigilance Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that if the Central Vigilance Commissioner or any Vigilance Commissioner is, at the time of his appointment, in receipt of retirement benefits in respect of any previous service rendered in a corporation established by or under any Central Act or a Government company owned or controlled by the Central Government, his salary in respect of the service as the Central Vigilance Commissioner or, as the case may be, the Vigilance Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salary, allowances and pension payable to and the other conditions of service of, the Central Vigilance Commissioner or any Vigilance Commissioner shall not be varied to his disadvantage after his appointment.

Removal of
Central
Vigilance
Commissioner
and Vigilance
Commissioner.

6. (1) Subject to the provisions of sub-section (3), the Central Vigilance Commissioner or any Vigilance Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought on such ground be removed.

(2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Central Vigilance Commissioner or any Vigilance Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Central Vigilance Commissioner or any Vigilance Commissioner if the Central Vigilance Commissioner or such Vigilance Commissioner, as the case may be,—

- (a) is adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (c) engages during his term of office in any paid employment outside the duties of his office; or
- (d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or
- (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Vigilance Commissioner or a Vigilance Commissioner.

(4) If the Central Vigilance Commissioner or any Vigilance Commissioner is or becomes in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

Power to
make rules by
Central
Government
for Staff.

7. The Central Government may, in consultation with the Commission, make rules with respect to the number of members of the staff of the Commission and their conditions of service.

CHAPTER III

FUNCTIONS AND POWERS OF THE CENTRAL VIGILANCE COMMISSION

Functions and
Powers of
Central
Vigilance
Commission.

8. (1) The functions and powers of the Commission shall be to—

- (a) exercise superintendence over the functioning of the Delhi Special Police Establishment insofar as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 or an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973 be charged at the same trial;
- (b) give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946:

49 of 1988

2 of 1974.

5 of 1946

Provided that while exercising the powers of superintendence under clause (a) or giving directions under this clause the Commission shall not exercise powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner;

- 49 of 1988
2 of 1974
- (c) inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the Prevention of Corruption Act, 1988 or an offence with which a public servant may, under the Code of Criminal Procedure, 1973, be charged at the same trial;
- 49 of 1988
2 of 1974
- (d) inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988 and an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973 be charged at the same trial;
- 9 of 1988
2 of 1974
- (e) review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the Prevention of Corruption Act, 1988 or the public servant may under the Code of Criminal Procedure, 1973 be charged at the same trial;
- 49 of 1988
- (f) review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988 ;
- (g) tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies societies and local authorities owned or controlled by the Central Government or otherwise;
- (h) exercise superintendence over the vigilance administrative of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government:

Provided that nothing contained in this clause shall be deemed to authorise the Commission to exercise superintendence over the Vigilance administration in a manner not consistent with the directions relating to vigilance matters issued by the Government and to confer power upon the Commission to issue directions relating to any policy matters.

(2) The persons referred to in clause (d) of sub-section (1) are as follows:—

- (a) members of All-India Services serving in connection with the affairs of the Union and Group 'A' officers of the Central Government;
- (b) such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf:

Provided that till such time a notification is issued under this clause, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in clause (d) of sub-section (1).

Proceedings of
Commission.

9. (1) The proceedings of the Commission shall be conducted at its headquarters.

(2) The Commission may, by unanimous decision, regulate the procedure for transaction of its business as also allocation of its business amongst the Central Vigilance Commissioner and other Vigilance Commissioners.

(3) Save as provided in sub-section (2), all business of the Commission shall, as far as possible, be transacted unanimously.

(4) Subject to provisions of sub-section (3), if the Central Vigilance Commissioner and other Vigilance Commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the majority.

(5) The Central Vigilance Commissioner, or, if for any reason he is unable to attend any meeting of the Commission, the senior-most Vigilance Commissioner present at the meeting, shall preside at the meeting.

(6) No act or proceeding of the Commission shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the Commission; or
- (b) any defect in the appointment of a person acting as the Central Vigilance Commissioner or as a Vigilance Commissioner; or
- (c) any irregularity in the procedure of the Commission not affecting the merits of the case.

Vigilance
Commissioner
to Act as
Central
Vigilance
Commissioner
in certain
circumstances.

10. (1) In the event of the occurrence of any vacancy in the office of the Central Vigilance Commissioner by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the Vigilance Commissioners to act as the Central Vigilance Commissioner until the appointment of a new Central Vigilance Commissioner to fill such vacancy.

(2) When the Central Vigilance Commissioner is unable to discharge his functions owing to absence on leave or otherwise, such one of the Vigilance Commissioners as the President may, by notification, authorise in this behalf, shall discharge the functions of the Central Vigilance Commissioner until the date on which the Central Vigilance Commissioner resumes his duties.

Other relating
enquiries.

11. The Commission shall, while conducting any inquiry referred to in clauses (b) and (c) of sub-section (1) of section 8, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and in particular, in respect of the following matters, namely:—

5 of 1908

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents; and
- (f) any other matter which may be prescribed.

Proceedings
before
Commission
to be judicial
proceedings.

12. The Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

2 of 1974

CHAPTER IV

EXPENSES AND ANNUAL REPORT

13. The expenses of the Commission, including any salaries, allowances and pensions payable to or in respect of the Central Vigilance Commissioner, the Vigilance Commissioners, Secretary and the staff of the Commission, shall be charged on the Consolidated Fund of India.

Expenses of Commission to be charged on the Consolidated Fund of India.

14. (1) It shall be the duty of the Commission to present annually to the President a report as to the work done by the Commission **within six months of the close of the year under report.**

Annual report.

25 of 1946. (2) The report referred to in sub-section (1) shall contain a separate part on the functioning of the Delhi Special Police Establishment in so far as it relates to sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946.

(3) On receipt of such report, the President shall cause the same to be laid before each House of Parliament.

CHAPTER V

MISCELLANEOUS

15. No suit, prosecution or other legal proceeding shall lie against the Commission, the Central Vigilance Commissioner, any Vigilance Commissioner, the Secretary or against any staff of the Commission in respect of anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

45 of 1860. 16. The Central Vigilance Commissioner, every Vigilance Commissioner, the Secretary and every staff of the Commission shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Central Vigilance Commissioner, Vigilance Commissioner and staff to be public servants.

17. (1) The report of the inquiry undertaken by any agency on a reference made by the Commission shall be forwarded to the Commission.

Report of any inquiry made on reference by Commission to be forwarded to that Commission.

(2) The Commission shall, on receipt of such report and after taking into consideration any other factors relevant thereto, advise the Central Government and corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government, as the case may be, as to the further course of action.

(3) The Central Government and the corporations established by or under any Central Act, Government companies, societies and other local authorities owned or controlled by that Government, as the case may be, shall consider the advice of the Commission and take appropriate action:

Provided that where the Central Government, any corporation established by or under any Central Act, Government company, society or local authority owned or controlled by the Central Government, as the case may be, does not agree with the advice of the Commission, it **shall**, for reasons to be recorded in writing, communicate the same to the Commission.

Power to call
for
information.

18. The Commission may call for reports, returns and statements from the Central Government or corporations established by or under any Central Act, Government companies, societies and other local authorities owned or controlled by that Government so as to enable it to exercise general supervision over the vigilance and anti-corruption work in that Government and in the said corporations, Government companies, societies and local authorities.

19. * * * * *

Consultation
with
Commission
in certain
matters.

20. The Central Government shall, in making any rules or regulations governing the vigilance or disciplinary matters relating to persons appointed to public services and posts in connection with the affairs of the Union or to members of the All-India Services, consult the Commission.

Power to
make rules.

21. (1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the number of members of the staff and their conditions of service under section 7.
- (b) any other power of the civil court to be prescribed under clause (f) of section 11; and
- (c) any other matter which is required to be, or may be, prescribed.

Power to
make
regulations.

22. (1) The Commission may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is expedient for the purposes of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

- (a) the duties and the powers of the Secretary under sub-section (4) of section 3; and
- (b) the procedure to be followed by the Commission under sub-section (2) of section 9.

Notification,
rule etc., to be
laid before
Parliament.

23. Every notification issued under clause (b) of sub-section (2) of section 8 and every rule made by the Central Government and every regulation made by the Commission under this Act shall be laid, as soon as may be after it is issued or made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or the rule or regulation, or both Houses agree that the notification or the rule or regulation should not be made, the notification or the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule or regulation.

Power to
remove
difficulties.

24. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

25. With effect from the constitution of the Commission under sub-section (1) of section 3, the Central Vigilance Commission set up by the Resolution of the Government of India in the Ministry of Home Affairs No. 24/7/64-AVD dated the 11th February, 1964 (hereafter referred to in this section as the existing Vigilance Commission) shall, in so far as its functions are not inconsistent with the provisions of this Act, continue to discharge the said functions and,—

Provisions relating to existing Vigilance Commission

- (a) all actions and decisions taken by the Vigilance Commission in so far as such actions and decisions are relatable to the functions of the Commission constituted under this Act shall be deemed to have been taken by the Commission.
- (b) all proceedings pending before the Vigilance Commission, in so far as such proceedings relate to the functions of the Commission, shall be deemed to be transferred to the Commission and shall be dealt with in accordance with the provisions of this Act.
- (c) the employees of the Vigilance Commission shall be deemed to have become the employees of the Commission on the same terms and conditions.
- (d) all the assets and liabilities of the Vigilance Commission shall be transferred to the Commission.

26. Notwithstanding anything contained in the Foreign Exchange Management Act, 1999 or any other law for the time being in force,—

Appointments, etc., of officers of Directorate of Enforcement.

- (a) the Central Government shall appoint a Director of Enforcement in the Directorate of Enforcement in the Ministry of Finance on the recommendation of the Committee consisting of—
 - (i) The Central Vigilance Commissioner — Chairperson;
 - (ii) Vigilance Commissioners — Members;
 - (iii) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government — Member;
 - (iv) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government — Member;
 - (v) Secretary to the Government of India in-charge of the Department of Revenue, Ministry of Finance in the Central Government — Member.
- (b) while making a recommendation, the Committee shall take into consideration the integrity and experience of the officers eligible for appointment;
- (c) no person below the rank of Additional Secretary to the Government of India shall be eligible for appointment as a Director of Enforcement;
- (d) a Director of Enforcement shall continue to hold office for a period of not less than two years from the date on which he assumes office;
- (e) a Director of Enforcement shall not be transferred except with the previous consent of the Committee referred to in clause (a);

- (f) the Committee referred to in clause (a) shall, **in consultation with the Director of Enforcement**, recommend officers for appointment to the posts above the level of the Deputy Director of Enforcement and also recommend the extension or curtailment of the tenure of such officers in the Directorate of Enforcement;
- (g) on receipt of the recommendation under clause (f), the Central Government shall pass such orders as it thinks fit to give effect to the said recommendation.

Amendment
of Act 25 of
1946.

27. In the Delhi Special Police Establishment Act, 1946,—

- (a) after section 1, the following section shall be inserted, namely:—

"1A. **Words and expressions used herein and not defined but defined in the Central Vigilance Commission Act, 2000, shall have the meanings, respectively, assigned to them in that Act.**";

- (b) for section 4, the following sections shall be substituted, namely:—

Superintendence
and
administration
of Special
Police
Establishment.

"4. (1) The superintendence of the Delhi Special Police Establishment in so far as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988, shall vest in the Commission.

49 of 1988.

(2) Save as otherwise provided in sub-section (1), the superintendence of the said police establishment in all other matters shall vest in the Central Government.

(3) The administration of the said police establishment shall vest in an officer appointed in this behalf by the Central Government (hereinafter referred to as the Director) who shall exercise in respect of that police establishment such of the powers exercisable by an Inspector-General of Police in respect of the police force in a State as the Central Government may specify in this behalf.

Committee
for appoint-
ment of
Director.

4A. (1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

- (a) the Central Vigilance Commissioner — Chairperson;
- (b) **Vigilance Commissioners** — **Members**;
- (c) Secretary to the Government of India in-charge of the Ministry of Home Affairs in the Central Government — Member;
- (d) Secretary to the Government of India in-charge of the Ministry of Personnel in the Central Government — Member.

(2) While making any recommendation under sub-section (1), the Committee shall **take into consideration** the views of the **outgoing** Director.

(3) The Committee shall recommend a panel of officers—

- (a) on the basis of seniority, integrity and experience in the investigation of anti-corruption cases; and
- (b) chosen from amongst officers belonging to the Indian Police Service constituted under the All- India Services Act, 1951.

51 of 1951.

for being considered for appointment as the Director.

4B. (1) The Director shall, notwithstanding anything to the contrary contained in the rules relating to his conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office.

Terms and Conditions of Service of Director.

(2) The Director shall not be transferred except with the previous consent of the Committee referred to in sub-section (1) of section 4A.

4C. (1) The Committee referred to in section 4A shall, after consulting the Director, recommend officers for appointment to the posts of the level of Joint Director and above and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment.

Appointment for Posts of Joint Director and above, extension and curtailment of their tenure, etc.

(2) On receipt of the recommendation under sub-section (1), the Central Government shall pass such orders as it thinks fit to give effect to the said recommendation.

(c) after section 6, the following section shall be inserted, namely:—

6A. (1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 except with the previous approval of the Central Government where such allegation relates to,—

49 of 1988.

(a) the employees of the Central Government of the level of Joint Secretary and above; and

(b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

(2) Notwithstanding anything contained in sub-section (1), no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the *Explanation* to section 7 of the Prevention of Corruption Act, 1988.”.

49 of 1988.

28. (1) The Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Resolution No. 371/20/99-AVD-III, dated the 4th April, 1999, is hereby repealed.

Repeal and saving.

(2) Notwithstanding such repeal and the cesser of operation of the Central Vigilance Commission Ordinance, 1999, anything done or any action taken under the said Resolution and the said Ordinance including the appointments made and other actions taken or anything done or any action taken or any appointment made under the Delhi Special Police Establishment Act, 1946 and the Foreign Exchange Regulation Act, 1973 as amended by the said Ordinance shall be deemed to have been made or done or taken under this Act or the Delhi Special Police Establishment Act, 1946 and the Foreign Exchange Regulation Act, 1973 as if the amendments made in those Acts by this Act were in force at all material times.

Ord. 4 of 1999.

25 of 1946.

46 of 1973.

SCHEDULE

[See section 5(3)]

Form of oath or affirmation to be made by the Central Vigilance Commissioner or Vigilance Commissioner:—

“I, A.B., having been appointed Central Vigilance Commissioner (or Vigilance Commissioner) of the Central Vigilance Commission do swear in the name of God that I will bear true faith and solemnly affirm.

allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgement perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the constitution and the laws.”.